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# MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

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## REQUEST FOR PROPOSALS

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<b>MHTC</b>	Missouri Highways and Transportation Commission
<b>MoDOT</b>	Missouri Department of Transportation
<b>RFP</b>	Request for Proposals
<b>ATMS</b>	Advanced Traffic Management System

## INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified organizations (**Offeror**) to furnish the described services to the Missouri Highways and Transportation Commission (**MHTC**). Six (6) copies of each proposal must be mailed in a sealed envelope to **Athena Nance, Procurement Supervisor, Missouri Department of Transportation, 2309 Barrett Station Road, Ballwin, Missouri, 63012** or hand-delivered in a sealed envelope to the MoDOT Procurement Office at the same address mentioned above. Proposals must be returned to the office mentioned above no later than 3:00 p.m., **May 24, 2006**.

MHTC reserves the right to reject any and all bids for any reason whatsoever. Time is of the essence for responding to the RFP within the submission deadlines.

## PROPOSAL

- (1) The Offeror shall provide a fee proposal to MHTC on the **PRICE PAGE** in accordance with the terms of this RFP.
- (2) The Offeror agrees to provide the services at the fees quoted, under the terms of this RFP.

\_\_\_\_\_  
Authorized Signature of Offeror: \_\_\_\_\_

Date of Proposal: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Electronic Mail Address: \_\_\_\_\_  
\_\_\_\_\_

## ACCEPTANCE

This proposal is accepted by MHTC.

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Date

**SECTION (1):  
GENERAL DESCRIPTION AND BACKGROUND**

- (A) **Request for Proposal:** This document constitutes a RFP from qualified organizations to provide **traffic data collection** services to MHTC and the Missouri Department of Transportation (**MoDOT**) (hereafter both are referred to as **Department**).
- (B) **Background:** As the **Department** strives to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri, it must look to innovative best value methods and practices to provide a safe and efficient movement of people and goods on Missouri's transportation system. Integrating and improving system management and operation activities along freeways by providing good real-time traffic information to transportation decision makers and users can significantly enhance the accomplishment of urban goals and objectives of saving lives, time and money.

The Gateway Guide Program (<http://www.gatewayguide.com/>) has been established as the St. Louis regional integrated transportation system management and operation program. Both public and private partners support this regional integrated program through various activities and services. The **Department** understands the importance of developing public/private partnerships as an innovative approach of providing enhanced management and operation services to regional transportation decision makers and users. Currently, the **Department** has two active partnership agreements that provides the real-time traffic information needed to better manage and operate our region and statewide transportation systems.

The purpose of this RFP is to request and select a private partner that will provide real-time traffic data collection services. These services will expand current traffic data collection activities in the St. Louis region. The selected private partner will provide services further described in Section 2 – "Scope of Work" to the **Department**. This real-time traffic data will be made available to the **Department** and limited regional public stakeholders in an acceptable format in accordance with executed contractual agreement. The private partner shall define in their traffic data collection process (see Section 2 – Scope of Work) ownership rights of traffic data collected. This traffic data collection private/public partnership will lead to a reduced service cost for the public partners while affording an opportunity for a private partner to develop a successful business.

- (C) **Fiscal Year:** The fiscal year runs from July 1-June 30.
- (D) **Contract Period:** A five-year contract with optional renewal for a five-year period at the sole discretion of the **Department**. The original contract period shall be five (5) years. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Missouri Department of Transportation shall have the right, at its sole option, to renew the contract for five (5) additional one-year periods, or any portion thereof, as long as funding remains available. In the event the Missouri Department of Transportation exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

## SECTION (2): SCOPE OF WORK

- (A) **Services:** The Offeror shall provide the following professional services: traffic data collection services.
- (B) **Specific Requirements:** The Offeror will provide to the **Department** five copies of a program proposal that will include the following:

**Traffic Data Collection Process** – the process should include how traffic data will be collected; what field vehicle detection stations will be designed, deployed, operated and maintained; what telecommunication architecture will be used to collect traffic data from field vehicle detection stations; how will the traffic data be accessed and interfaced with the Gateway Guide Advanced Traffic Management System (ATMS) and other regional public stakeholders; and how will traffic data be stored and archived.

The following are minimum traffic data collection requirements:

- Vehicular traffic counts, average speeds, vehicular classifications (at least three classes) and occupancy per lane includes ramp lanes where available
- Traffic data (as described above) shall be collected every 60 seconds (maximum refresh rate) and made available in real-time to the Gateway Guide ATMS; and stored and archived in Offeror's Data Warehouse with access to 5 minute, 15 minute, 60 minute and 24 hour historical accumulated traffic data.
- Traffic data shall be imported directly into the Gateway Guide ATMS through a standard interface. The Offeror shall be responsible to ensure that traffic data collected and supplied can be imported and shall be responsible for all costs associated with the required interface to the ATMS. The ATMS integrator is National Engineering Technology – Mr. Bill Kemle, 650 East Algonquin Road, Suite 104, Schaumburg, Illinois 60173 or email address is [wkemle@nateng.com](mailto:wkemle@nateng.com)
- Traffic data collection field detection stations shall be at least every 1½ miles and should be located near existing interchanges where possible

The following freeway sections shall be the locations of the requested traffic data services:

- Interstate 44 – St. Louis County – Interstate 270 (mile marker 276) to west of Six Flags Road (mile marker 257) – approximately 19 miles coverage
- Interstate 55 – Jefferson County – Richardson Road (mile marker 190) to south of Route M (mile marker 184) – approximately 6 miles coverage
- US Route 40 (future Interstate 64) – St. Charles County - Route K (mile marker 9) to Interstate 70 (mile marker 0) – approximately 9 miles coverage

**Traffic Data Quality Control Plan** – the Offeror shall submit their Quality Control Plan that includes, but not limited to the following:

- Maintenance and operation of the data collection system (field detection stations, telecommunication architecture, data warehouse, etc.)
- Data verification includes data loss, notification of data loss, response and recovery plan elements for data loss, monitoring and reporting of data loss, unexpected or invalid data monitoring and reporting process, etc.

**(C) Administration of Program:** The Offeror will consult MHTC's representative regarding any problems involved with the administration of the services provided pursuant to this RFP.

### **SECTION (3): AGREEMENT REQUIREMENTS**

This RFP shall be governed by the following contract provisions. The award of this RFP is subject to a post-award negotiated contract. These same contract provisions will appear in the post-award negotiated contract. If the parties are unable to agree to terms in the post-award contract, MHTC shall reserve the right to cancel the award of the RFP and contract and select a different offeror.

- (A) MHTC's Representative:** MoDOT's Chief Engineer is designated as MHTC's representative for the purpose of administering the provisions of the Agreement as defined in Paragraph (E) of this section. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Agreement. The Offeror shall fully coordinate its activities for MHTC with those of the **Department's** St. Louis District Office. As the work of the Offeror progresses, advice and information on matters covered by the Agreement shall be made available by the Offeror to the **Department's** St. Louis District Office throughout the effective period of the Agreement.
- (B) Release to Public:** No material or reports prepared by the Offeror shall be released to the public without the prior consent of MHTC's representative.
- (C) Assignment:** The Offeror shall not assign or delegate any interest, and shall not transfer any interest in the services to be provided (whether by assignment, delegation, or novation) without the prior written consent of MHTC's representative.
- (D) Status as Independent Contractor:** The Offeror represents itself to be an independent contractor offering such services to the general public and shall not represent itself or its employees to be an employee of MHTC or MoDOT. Therefore, the Offeror shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.
- (E) Components of Agreement:** The Agreement between MHTC and the Offeror shall consist of: the RFP and any written amendments thereto, the Standard Solicitation Provisions and General Terms

and Conditions that are attached to this RFP, the proposal submitted by the Offeror in the response to the RFP and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Offeror's proposal. The Offeror is cautioned that its proposal shall be subject to acceptance by MHTC without further clarification.

- (F) **Amendments:** Any change in the Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the Offeror and MHTC.
- (G) **DBE/WBE Participation Encouraged:**
1. Bidders are encouraged to submit copies of existing affirmative action programs, if any. Bidders are also encouraged to directly hire minorities and women as direct employees of the bidder. MHTC reserves the right to consider the use of minority and female employee when making the award of the Agreement.
  2. Regardless of which persons or firms, if any, that the Offeror may use as subcontractors, subconsultants, or suppliers of goods or services for the services to be provided, the Offeror ultimately remains responsible and liable to MHTC for the complete, accurate and professional quality/performance of these services.
- (H) **Nondiscrimination:** The Offeror shall comply with all state and federal statutes applicable to the Offeror relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).
- (I) **Bankruptcy:** Upon filing for any bankruptcy or insolvency proceeding by or against the Offeror, whether voluntarily, or upon the appointment of a receiver, Offeror, or assignee, for the benefit of creditors, MHTC reserves the right and sole discretion to either cancel the Agreement or affirm the Agreement and hold the Offeror responsible for damages.
- (J) **Law of Missouri to Govern:** The Agreement shall be construed according to the laws of the state of Missouri. The Offeror shall comply with all local, state and federal laws and regulations relating to the performance of the Agreement.
- (K) **Cancellation:** MHTC may cancel the Agreement at any time by providing the Offeror with written notice of cancellation. Should MHTC exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Offeror.
- (L) **Venue:** No action may be brought by either party concerning any matter, thing or dispute arising out of or relating to the terms, performance, nonperformance or otherwise of the Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that the Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place at or be delivered

to Jefferson City, Missouri, by reason of which the Offeror consents to venue of any action against it in Cole County, Missouri.

- (M) **Ownership of Reports:** All documents, reports, exhibits, etc. produced by the Offeror at the direction of MHTC's representative and information supplied by MHTC's representative shall remain the property of MHTC.
- (N) **Confidentiality:** The Offeror shall not disclose to third parties confidential factual matters provided by MHTC's representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC's representative. The Offeror shall notify MHTC immediately of any request for such information.
- (O) **Nonsolicitation:** The Offeror warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Offeror, to solicit or secure the Agreement, and that it has not paid or agreed to pay any percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, MHTC shall have the right to annul the Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- (P) **Conflict of Interest:** The Offeror covenants that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services under this Agreement. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this Agreement.
- (Q) **Maintain Papers:** The Offeror must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement.
1. MHTC's representative shall have the right to reproduce and/or use any products derived from the Offeror's work without payment of any royalties, fees, etc.
  2. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.
- (R) **Indemnification:** The Offeror shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement. In addition to the liability imposed upon the Offeror on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Offeror's performance under this Agreement, the Offeror assumes the obligation to save harmless MHTC, including its agents, employees and assigns, and to indemnify MHTC, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees. The Offeror also agrees to hold harmless MHTC, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Offeror for any purpose under this Agreement, and to indemnify MHTC,



including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission. Any requirement of the Offeror that MHTC indemnify and hold harmless the Offeror in its response to this RFP or in the post-award contract will result in the Offeror's response being deemed non-responsive and will be rejected.

**(S) Insurance:**

(1) Prior to contract signing, the Offeror may be asked about its ability to provide certificates of insurance which meet, or approach, the following coverages:

- a. General Liability                      \$400,000 per occurrence and \$2,500,000 aggregate;
- b. Automobile Liability                \$400,000 per occurrence and \$2,500,000 aggregate
- c. Missouri State Workmen's Compensation policy or equivalent in accordance with state law.

**SECTION (4):  
PROPOSAL SUBMISSION INFORMATION**

**(A) SUBMISSION OF PROPOSALS**

1. **Pricing and Signature:** Proposals should be priced, signed and returned (with necessary attachments) to **Ms. Athena Nance** as provided in this RFP. Specifically, any form containing a signature line in this RFP and any amendments, pricing pages, etc., must be manually signed and returned as part of the proposal.
2. **Submission of All Data Required:** The Offeror must respond to this RFP by submitting all data required in paragraph (B) below for its proposal to be evaluated and considered for award. Failure to submit such data shall be deemed sufficient cause for disqualification of a proposal from further consideration.
3. **Public Inspection:** The Offeror is hereby advised that all proposals and the information contained in or related thereto shall be open to public inspection and that MHTC does not guarantee nor assume any responsibility whatsoever in the event that such information is used or copied by individual person(s) or organization. Therefore, the Offeror must submit its proposal based on such conditions without reservations.
4. **Clarification of Requirements:** Any and all questions regarding specifications, requirements, competitive procurement process, or other questions must be directed to:  
**Ms. Athena Nance**  
Missouri Department of Transportation  
2309 Barrett Station Road  
Ballwin, Missouri 63021  
Telephone No. (314)-301-1431  
Facsimile No. (314)-301-1437  
E-mail address: [Athena.Nance@modot.mo.gov](mailto:Athena.Nance@modot.mo.gov) and [Teresa.Mount@modot.mo.gov](mailto:Teresa.Mount@modot.mo.gov)

5. **Written Questions:** Any pre-submission question(s), comment(s), concern(s) or request(s) for clarification regarding the RFP or proposal requirements shall be submitted **on or before May 5, 2006, 2:00 p.m., local time**, by facsimile transmission (fax), electronic mail (email), or in writing, to Ms. Athena Nance at the address listed above. No questions about the RFP will be entertained after the due date for Written Questions

Responses to the questions will be posted on The Department's website at: [http://www.modot.mo.gov/business/contractor\\_resources/NonHighway-ConstructionBids.htm](http://www.modot.mo.gov/business/contractor_resources/NonHighway-ConstructionBids.htm) in the form of a written addendum. **It is anticipated that this addendum will be issued on May 12, 2006.** No contact with the Commission Board members or other Department's staff will be allowed during the RFP process. Any contact with these individuals will be grounds for disqualification. It will be the responsibility of the Offeror to access The Department's website in order to obtain any and all addenda issued during the course of this RFP process.

#### **(B) REQUIRED ELEMENTS OF PROPOSAL**

1. **Experience.** The proposal must clearly identify the Offeror's experience in offering the services requested in this RFP during the past three (3) years. The description should include a list of the agencies that your institution has served or currently serves. **The Offeror must utilize Exhibit A for summarizing the experience information.**
2. **Personnel.** Please indicate the name, location, telephone number, fax number and email address of the primary contact person for the Offeror. Information presented in this section should highlight the previous Offeror experience, as well as any work with other state agencies or local governments in Missouri. Offeror must furnish a complete listing of each subconsultant, if any, and complete contact information for that subconsultant.
3. **Proposed Method of Operation and Performance.** Proposals shall be subjectively evaluated based on the Offeror's proposed method of operation and proposed method of performance in meeting the requirements of this RFP. Therefore, the Offeror must present a written narrative that demonstrates the method or manner in which the Offeror proposes to satisfy services requested in this document. The language of the narrative shall be straightforward and limited to facts, solutions, and action plans. **All Offeror's Proposals shall be limited to 20 pages (letter size 8½ by 11 inches) in length.** In presenting this information, the Offeror must submit or describe the following:
  - Provide detailed information about the proposed Traffic Data Collection Process as describe in Section (2) (B) of this RFP.
  - Provide detailed information about the proposed Traffic Data Quality Control Plan as described in Section (2) (B) of this RFP.
  - Provide detailed information about the proposed method for interfacing with the Gateway Guide ATMS to accomplish automated real-time traffic data transfer.

4. **References.** Proposals should indicate the name, title and telephone number of at least three officials of clients within the past three years.

**(C) EVALUATION CRITERIA AND PROCESS**

1. **Evaluation Factors:** Any agreement for services resulting from this RFP shall be awarded to the Offeror providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria:
  - A. Experience, expertise and reliability (20 points);
  - B. Proposed Method of Performance (20 points);
  - C. Cost, Fees and Expenses (45 points);
  - D. Recommendations from references (10 points); and
  - E. Overall clarity and quality of proposal (5 points);
2. **Historic Information:** MHTC reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, question and answer conferences, references, or other sources, in the evaluation process.
3. **Responsibility to Submit Information:** The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that MHTC's representative is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

**(D) PRICING**

1. **Fee Schedule:** The Offeror must submit a proposed fee for all services defined in the Scope of Work. This fee must be shown on Section (5), Price Page, of this proposal that must be completed, signed and returned with the Offeror's proposal.

**SECTION (5):  
PRICE PAGE**

- (A) **FEE SCHEDULE:** The Offeror shall indicate below all fees for providing services in accordance with the provisions and requirements stated herein for services required. These fees shall be applicable for a one-year period beginning on the date that official notification of RFP Acceptance was issued. The **Department** has the right to accept or refuse by route.

Any applicable cap on out-of-pocket expense also should be noted.

Route	Estimated Number of Station	Deployment Cost	Annual Operation Cost
I-44	14		
I-55	5		
US40/I-64	7		

- Number of Stations is an estimate number of vehicle detection stations based on the required 1½-mile spacing – Offeror shall determine actual number deployed based on their business approach.
- Deployment cost is the initial fee paid by route when the Department in accordance with requirements in this RFP receives acceptable traffic data.
- Annual operation costs are annual fees paid for operation expenses associated with real-time traffic data collection, storage and transfer to the Gateway Guide Program and limited public stakeholders

**Company:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

- (B) **EXPENSES:** List the nature of expenses for which reimbursement would be sought and the estimated amount of such expenses.

Expenses	Estimated Amount
Miscellaneous (list-attach additional sheet if needed)	
Total	

**Company:**

**Signature:**

**Date:**

## EXHIBIT A FIRM'S PRIOR EXPERIENCE

(Duplicate this page, or supply the information it requests, for each firm and contract listed)

### PRIOR SERVICES PERFORMED FOR:

Agency Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

Description of Professional Services Contract: \_\_\_\_\_

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NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

#### **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Officer and must be adhered to. If time varies on different items, the Bidder/Officer shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Officer will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted. If provided, these bids/proposals should be returned in the MoDOT solicitation return envelope.
- g. If a solicitation return envelope is provided by MoDOT, the bid/quote/proposal should be returned in the envelope provided with the Bid/RFQ/RFP Request Number plainly indicated thereon.
- h. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

#### **GENERAL TERMS AND CONDITIONS**

##### **General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

##### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

##### **Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

**Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Officer agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

**Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization, which will perform the work, is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

**Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Officer upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.

**Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor will be required to submit to MoDOT a copy their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

**Preferences**

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.



- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more**
- c. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

#### **Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Cancellation of Contract**

- a. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner, as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

#### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

#### **Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

#### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

#### **Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

#### **Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility

for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

#### **Indemnification**

- a. The Contractor shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement.
- b. In addition to the liability imposed upon the Contractor on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Contractor's performance under this Agreement, the Contractor assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees.
- c. The Contractor also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

#### **Insurance**

- a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.
- b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:
  - 1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained if required by law.
  - 2) Public Liability (includes property damage and personal injury):
    - i) Not less than \$400,000 each individual per accident or occurrence.
    - ii) Not less than \$2,500,000 each accident or occurrence.
  - 3) Special Hazard Insurance: As required.
  - 4) Builder's Risk: Not less than the full Contract amount.

#### **Information and Reports**

- a. The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

#### **Cancellation of Contract**

- a. If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.
- b. If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.